afraid of freedom, it is the best weapon we have.

You do not hear me quote Ronald Reagan very often, but that was beautiful.

And finally, to quote our old friend Will Rogers, and I will close with this:

When Congress gets the Constitution all fixed up, they're going to start on the Ten Commandments, just as soon as they can find somebody in Washington that's read them.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMS. Mr. President, I rise today to join my colleagues in support of Senate Joint Resolution 31. I did not come to the floor to cite case law or precedent or to dispute the predictions and the pronouncements of the constitutional scholars. I will leave that to the lawyers in this Chamber. But I came here to tell you what I believe in my heart as an average American, the son of a veteran, the kind of person who puts his hand across his chest during the national anthem and gets a lump in his throat during parades when the Stars and Stripes go by.

What is it about this multicolored piece of cloth that inspires such emotion? Perhaps it is the high price this Nation has paid for the honor of flying it.

Fifty-three thousand Americans gave their lives defending this piece of cloth in World War I; 292,000 Americans in the Second World War; 33,000 Americans in Korea; 47,000 Americans in Vietnam; most recently, 138 Americans gave their lives defending this piece of cloth in the Persian Gulf war.

And when the bodies of those defenders of freedom were returned home, it was this piece of cloth atop their caskets that caught and cradled the tears of their loved ones.

In my heart, I know that the men and women who sacrificed everything they had to give on behalf of this flag and the ideals it represents would be heartsick to see it spit upon, trampled over, burned, desecrated.

This is so much more than just another piece of cloth.

Mr. President, in a nation like ours that celebrates diversity, there is little that ties us together as a people. We come from different nationalities. We practice different religions. We belong to different races. We live in different corners of this immense Nation, speak different languages, eat different foods. There is so much that should seemingly divide us. But under this flag, we are united.

Far from being just a piece of cloth, the flag of the United States of America is a true, national treasure. Because of everything it symbolizes, we have always held our flag with the greatest esteem, with reverence. That is why we fly it so high above us. When the flag is aloft, it stands above political division, above partisanship.

Under this flag, we are united. And Americans are united in calling for a constitutional amendment allowing them to protect their flag.

When you ask them if burning the U.S. flag is an appropriate expression of freedom of speech, nearly four out of every five Americans say no, it is not. In my home State of Minnesota, nearly 70 percent of my neighbors support Senate Joint Resolution 31, and have called on Congress to pass it this year.

Mr. President, there is no Minnesotan who has been more vocal in this fight than Daniel Ludwig of Red Wing, and I am so proud of his efforts. Just this summer, Mr. Ludwig had the great honor of being elected National Commander of the American Legion during the organization's 77th annual national convention.

Mr. Ludwig knows what the flag means to the soldiers and veterans of the American Legion. He is a Vietnam-era veteran of the U.S. Navy who spent 8 years in the military, and he told me that passage of the amendment we debate today remains the American Legion's No. 1 priority.

''We are so close to victory,'' he said. ''Protecting the American flag from desecration can be our greatest victory.''

It has been too long in coming.

Since 1989, the year the U.S. Supreme Court struck down state laws banning desecration of the flag, 49 of our 50 States have passed resolutions directing Congress and their State legislators to support a flag protection amendment.

Our legislation restores to the States the right snatched away from them by the court to enact flag-protection laws. It does not force the States into action. It does not set punishments. It says simply that ''the Congress and the States shall have power to prohibit the physical desecration of the flag of the United States.''

This amendment returns to the people the power to pass the flag-protection laws they feel are appropriate for their communities.

Of course, there are those who are opposed to this amendment, individuals who do not believe the people can be entrusted with the responsibility of amending the Constitution. They think Congress should play the role of protector, a guardian body that exists to save the people from their own foolishness.

It is not something we enter into recklessly, but it is the right of the people to amend their own Constitution. Our Founding Fathers were wise enough to understand that times and circumstances change, and a Constitution too rigid to bend with the times was likely to break. They created the amendment process for that very purpose. We amend the Constitution when circumstances tell us we must.

Mr. President, we need this amendment because the soul of our society seems to have been overtaken by the tennis-shoe theology of ''just do it.''

If it feels good, just do it. Forget about obligation to society. Forget about personal responsibility. Forget about duty, honor, country. ''If it feels good, just do it,'' they say.

If it makes you feel good to burn a flag, just do it. After all, it is just a piece of cloth.

Just a piece of cloth? Tell that to the men, women, and children who each day stand before the black granite walls of the Vietnam Veterans Memorial, tearfully tracing with their finger the name of a loved one chiseled deep into the stone.

Tell that to the veterans of the Korean war, who have come by the thousands to their new memorial just across the reflecting pool. They see the statues of the soldiers, poised in a battle march, the horror of war forever frozen in the hardened steel, and they remember those who did not come back.

Tell it to the veterans of World War I and World War II, who each year don their uniforms for the annual Veteran's Day parades. Time may have slowed their march and stiffened their salute, but it has not diminished their passion for the flag.

To say that our flag is just a piece of cloth—a rag that can be defiled and trampled upon and even burnt into ashes—is to dishonor every soldier who ever fought to protect it. Every star, every stripe on this flag was bought through their sacrifice.

Mr. President, as I walked to the Capitol this morning and saw the flags on either side of the great dome flapping in a gentle breeze, I knew I could not stand here today, cold and analytical, and pretend I did not have a stake in this emotional debate.

It is average Americans like me who cannot understand why anyone would burn a flag. It is Americans like me who cannot understand why the Senate would not act decisively, overwhelmingly, to pass an amendment affording our flag the protection it deserves.

I know in my heart that this simple piece of cloth is worthy of constitutional protection, and I urge my colleagues to search their own hearts and support Senate Joint Resolution 31.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THOMPSON). Without objection, it is so ordered.

## HOUSING FOR OLDER PERSONS ACT

Mr. BROWN. Mr. President, I ask unanimous consent that the Senate

now turn to consideration of Calendar No. 231, H.R. 660.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 660) to amend the Fair Housing Act to modify the exemption from certain familial status discrimination prohibitions granted to housing for older persons.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Housing for Older Persons Act of 1995''.

**SEC. 2. DEFINITION OF HOUSING FOR OLDER PERSONS.**

Section 807(b)(2)(C) of the Fair Housing Act (42 U.S.C. 3607(b)(2)(C) is amended to read as follows:

''(C) intended and operated for occupancy by persons 55 years of age or older, and—

''(i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;

''(ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and

''(iii) the housing facility or community complies with rules issued by the Secretary for verification of occupancy, which shall—

''(I) provide for verification by reliable surveys and affidavits; and

''(II) include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.''.

**SEC. 3. GOOD FAITH ATTEMPT AT COMPLIANCE; DEFENSE AGAINST CIVIL MONEY DAMAGES.**

Section 807(b) of the Fair Housing Act (42 U.S.C. 3607(b)) is amended by adding at the end the following new paragraph:

''(5)(A) A person shall not be held personally liable for monetary damages for a violation of this title if such person reasonably relied, in good faith, on the application of the exemption under this subsection relating to housing for older persons.

''(B) For the purposes of this paragraph, a person may only show good faith reliance on the application of the exemption by showing that—

''(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and

''(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.''.

Mr. BROWN. I further ask unanimous consent the bill be considered under the following limitation: 1 hour for debate on the bill to be equally divided between Senator BROWN and Senator BIDEN, that no amendments be in order to the bill with the exception of one amendment, and that following the expiration or yielding back of debate time, the committee amendment be agreed to, the bill be read a third time, and the Senate proceed to a vote on passage of the bill with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. BROWN. Mr. President, for clarification, I ought to note the amendment that is referenced is the committee amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Colorado.

Mr. BROWN. Mr. President, the Civil Rights Act of 1968 was passed specifically to prohibit discrimination on the basis of race. Title VIII of the act was the Fair Housing Act. It prohibited discrimination on the basis of ''race, color, religion or national origin'' for any sale of housing, rental of housing, financing of housing, or provision of brokerage services.

The housing practices in which discrimination is prohibited include the following: Sale or rental of a dwelling, provision of services or facilities in connection with a sale or rental of a dwelling, steering any person to or away from a dwelling, misrepresenting availability of dwellings, discriminatory advertisements, and charging different fees provided and different benefits.

The 1974 Fair Housing Act, or title VIII of the Civil Rights Act, was amended to prohibit discrimination on the basis of sex. In 1988, the Fair Housing Act was amended again to prohibit discrimination on the basis of being handicapped or familial status, which means living with children under 18. That is, the 1988 Fair Housing Act prohibition of discrimination on the basis of living with children under 18 included an exemption ''for housing for older persons.'' In other words, H.R. 660, which enables housing for older persons, is not a new idea. This debate is really about refining the original one.

To meet the definition for housing for older persons under current law, the housing must be intended for occupancy by persons 55 years or older, where there are ''significant facilities and services'' designed to meet the physical or social needs of older persons.

Interpreting and implementing the ''significant facilities and services'' standard has been very troublesome. In other words, it has been a pain in the neck because it has been vague, it has been difficult, it has spawned litigation and created confusion. For the last 7 years, it has been unclear what ''significant facilities and services'' means. There have been so many lawsuits that the exemption Congress intended is fast being revoked in fact.

Mr. President, the way bureaucrats have administered this provision would make the people who came up with the Mississippi literacy test proud. It acts as a bar to the reasonable provisions of the law that were intended to make housing available for families with children while continuing to allow housing for older persons. The fact is, some older people do prefer not to have the noise and the trauma that go along with having children. Frankly, families with children sometimes prefer not to have the complaints about their activity as well.

H.R. 660 is intended to clear up this problem. It is intended to make the law clear and workable, and to stabilize the original exemption Congress created for senior housing.

In other words, what we are dealing with here is making the law clearer and more workable for seniors. This bill aims to protect seniors so that they can, if they wish to, move into housing where they are protected in their safety and their privacy.

H.R. 660 will clarify the law and put in place a bright line test for senior housing. The test is: First, the housing is intended and operated for seniors; second, there is an actual 80 percent occupancy rate of the occupied units; third, the intent is manifested by published policies of the housing community; and fourth, the housing community complies with HUD rules. If that is met, then senior housing is safe from lawsuit.

This revision, this clarification, passed in the House of Representatives 424 to 5. It was overwhelming. It is the least we can do to give senior citizens the help they both desire and merit. Frankly, this kind of abuse that senior citizens have been subject to from the bureaucracy with regulations ought to end. We ought to have rules that a reasonable person can understand and deal with. What we have been subjected to in the existing regulations that have come down is flatly an effort to thwart the will of Congress, not an effort to deal reasonably with the problem.

The reality is, we would not have this bill before us today if we had not had some Federal regulators that had simply tried to thwart the original intent of Congress. We would not have this bill before us if the bureaucrats had simply tried to deal with this problem in a way that was less cumbersome and less difficult.

I should point out that not only is this bill something that passed the House by 424 to 5, but reasonable efforts have been made in this Chamber to modify the bill to further obtain consensus. We have accepted suggestions made by Senator SIMON and others which address their concerns. What comes out of committee and what is available for the Senate to consider, therefore, is a bill that I think Members will be comfortable in voting for and will feel they can report to their constituents: We have cleaned up the law, we have clarified the law, we have ended some unnecessary and unreasonable regulatory burdens and given a reasonable, clear definition to protect the interests of senior citizens.

Mr. President, at this point I yield the floor and I suggest the absence of a quorum and ask unanimous consent that the time of the quorum call be charged equally to myself and the Senator from Delaware.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, I ask for the yeas and nays on H.R. 660.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. BROWN. Mr. President, I suggest the absence of a quorum and ask that the time under the quorum call be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, the point of this bill is to deal with a problem in seniors housing communities that is created up by the ludicrous HUD regulations which this Congress directed but which had earlier been rejected and the new ones which I think strain the imagination.

The problem that the seniors housing exemption could only be allowed for facilities that were designed for the very wealthy. So we have a circumstance where, if you followed the existing HUD regulations, the rich could enjoy the exemption but the normal seniors could not.

Let me, for those Members who find that hard to believe—and I must say I find it hard to believe—mention some of the standards that HUD put forward in regulations that they suggested seniors must have in order to qualify for the exemption:

T'ai chi classes, swim therapy, macrame classes, fashion shows, regularly offered CPR classes, and vacation house watch.

How many normal seniors do you know who have a need for that?

Pet therapy services.

Are these things that you ought to have in a program to qualify for a normal exemption?

Ping-pong, pool table, shuffleboard, horseshoe pits, golf courses.

These are things the average senior would find extravagant.

Lawyers' offices, lifeguards, swimming or water aerobic instructors, dance and exercise instructors, craft instructors.

I mention these because they are in the HUD guidelines. I mention them also to make this point: HUD designed guidelines that, for the normal seniors in this country, became exorbitantly expensive, and it was part of an effort by HUD, I believe, to simply do away with the seniors exemption that would extend this housing privilege to normal seniors in this country.

At this point, I yield 8 minutes of my time to the distinguished Senator from Arizona.

Mr. KYL. I thank the Senator.

Mr. President, I certainly have been privileged to work with the Senator from Colorado in supporting this very important piece of legislation and would like to reiterate at the very outset precisely what we do here and why. This bill, as the Senator from Colorado has noted, eliminates many of the problems that senior communities have experienced over the last decade, and I think everyone recognizes that my State of Arizona was really a pioneer in the creation of these senior communities. They know who they are, and they do not need the Department of Housing and Urban Development designing a set of criteria such that the Senator from Colorado has just provided us with to define them as a senior community.

Believe me, if you go to Arizona and you are in one of these communities, you are fully aware that that is where you are. But under current law, these communities must follow these HUD guidelines or regulations in order to qualify for the exemption. The bill repeals this so-called significant facilities requirement, simplifying the process by which legitimate seniors-only facilities will gain the exemption.

To obtain the exemption, the bill only requires that 80 percent of the households in a community have in residence at least one person over the age of 55. That is the requirement.

If the community publicly states and can prove that 80 percent of its units have one or more occupants age 55 or older, then it would pass the adults-only housing test and qualify for an exemption from the Fair Housing Act's antifamily discrimination rule even if it lacked the significant facilities as defined by HUD.

In addition, to reduce abusive litigation, the bill allows that realtors and developers may show good-faith reliance on the seniors-only exemption if such person has no actual knowledge that the facility or community is not or will not be eligible for such an exemption, and the facility or community has stated formally in writing that the facility or community complies with the requirement for such exemption.

Now, who supports this legislation? Fortunately, just about everybody. I have received literally hundreds of letters of support from seniors living in these communities. Many of the community coordinators have expressed support to us. Due to HUD's stringent ''significant facilities'' regulations, it is the fact that a few of these communities have actually lost their seniors exemption.

Constituents from Mesa, Tucson, Golden Valley, Green Valley, Scottsdale, Sun City, Yuma, Dreamland Villa Community, and Phoenix have all communicated with me. Groups like the Arizona Association of Manufactured Homeowners and their 25,000 homeowners, Adult Action of Arizona and their 42,000 homeowners, Fountain of the Sun Homeowners, Arizona Manufactured Housing Institute, Sun Lakes Homeowners, Yuma East Owners Association, Ellenburg Capital Corp., and Fountains Retirement Properties, these and others have contacted me in support of this.

Real estate agents—the National Association of Realtors—and housing development firms all favor this bill. AARP has written a letter to the chairman of the committee, Senator HATCH.

I ask unanimous consent that the letter of the AARP in support of this legislation be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KYL. Many of these constituents argue that the rule defining ''significant facilities and services'' increases the costs to their housing and tells them how to live. And that is the objection I think in addition to the complexity of complying with these HUD regulations.

These individuals have complained that some senior housing complexes are being hit with unfair discrimination lawsuits because of confusion about which housing qualifies for the exemption from the antidiscrimination housing statute.

Why is this bill important?

Although the ''significant facilities and services'' provision was well intended—it was designed to protect families with children from discrimination in housing, which we all support, of course—the exemption has made the lives of seniors unnecessarily difficult.

Fewer regulations and restrictions would allow senior communities to operate more efficiently and freely. Is it too much to ask that the seniors of our country be allowed to live without intrusion into their lives by the Federal Government?

Most senior citizens I know are independent and highly capable. They do not want to pay extra to have somebody read to them. They do not want or need to be told by the Federal Government how often they have to have bingo made available to them in their housing complex.

By increasing the price of rent in senior facilities, these regulations in effect discriminate against low-income seniors, as the Senator from Colorado has pointed out.

There is one other thing that I would like to say because there is an argument that the Housing and Urban Development Department recognized the problems with its regulations and therefore sought to relieve some of the burden by revising and imposing a new set of regulations.

I almost did not use the word ''imposing,'' but that is what it is. And I think the point of this legislation is to

say, ''Nice try, but you still have not solved the problem.''

This most recent rule of HUD revising the ''significant facilities and services'' regulation really does not answer the problem.

One of my constituents, Susan Brenton, for the 25,000 Member Arizona Association of Manufactured Homeowners Group, stated, ''The new rule is still very nebulous and leaves a lot of areas open to court decisions and each court case costs the residents of the community thousands of dollars.''

The new regulations state that communities that provide at least 2 services each from 5 of 12 categories all defined by HUD qualify for the exemption. But these services are really quite frivolous, and they raise the costs to residents. This is what the Senator from Colorado was just quoting from, Mr. President.

These so-called easier regulations are really at the end of the day not much of an improvement. HUD's attempt at revising its statistics have only trivialized what qualifies as a ''significant service.'' Clearly, HUD needs some help in fixing the problem that it fully acknowledges exists—regulatory overreach in senior housing—but we think the way to solve the problem is to eliminate the ''significant facilities and services'' requirement altogether, and that is what H.R. 660 does.

Mr. President, in conclusion, this legislation has received not only wide support from States like mine which have a lot of senior communities, but as you know, it has wide support around the country. It has significant support in the Senate. It passed out of our Judiciary Committee with virtual unanimity, and I am sure it will be adopted by this body in very short order, again, with virtual unanimity.

What we will be saying to the senior communities of our country is that we heard you when you let us know that these regulations were too costly, too burdensome and really in a sense too frivolous, and therefore the Congress is not incapable of acting to correct a problem like this in order to make your lives a little easier. That is what we will have done when we pass this important legislation.

Again, I commend my colleague from the State of Colorado for bringing the legislation forth and for getting it to the floor so that we can see this job through and get it done before the end of the year.

I thank the Chair very much and reserve the remainder of whatever time I did not use.

EXHIBIT 1

AARP,
*Washington, DC, October 23, 1995.*

HON. ORRIN HATCH,
*Chairman, Committee on the Judiciary, Senate Dirksen Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing on behalf of the American Association of Retired Persons (AARP) to express our continuing support for the Housing for Older Persons Act of 1995 (H.R. 660) and to urge its immediate consideration and passage.

AARP believes that age-specific housing should be preserved as an important service to many older persons. Congress recognized at the time the Fair Housing Amendments Act was passed that the standards established to meet the statute's exemption for housing for older persons would have to be clear, workable, and flexible enough to be applicable to the wide array of housing, residents, and abilities to pay in the elderly housing market. Unfortunately, promulgating and enforcing clear and workable standards has proven to be nearly impossible. Efforts to clarify the statute's requirement of ''significant facilities and services'' have been undertaken in three rulemakings under two Administrations.

While AARP applauds HUD's most recently issued rule—a significant improvement over its proposed rule of July 1994—the Association has come to the conclusion that the complex and seemingly contradictory statutory provisions defining housing for older persons have made equitable enforcement very difficult, if not impossible. Our Legal Counsel for the Elderly office was unable to find any successful defense of a claim of exemption for housing for older persons among cases receiving judicial review. When coupled with significant anecdotal evidence of rather arbitrary decisions by fair housing investigators, the conclusion is inescapable that implementation of the law has not been consistent with the flexibility intended by Congress. Indeed, widespread dissatisfaction with the statute's enforcement threatens the very viability of the important new protections provided in the Act.

AARP appreciates the leadership of your Committee and the work of Senators Gorton and Kyl in addressing this issue. If we can be of any further assistance, please do not hesitate to have your staff contact Don Redfoot of our Federal Affairs staff at 434–3800.

Sincerely,

MARTIN CORRY,
*Director, Federal Affairs.*

Mr. BOND. Mr. President, I rise in support of H.R. 660, the Housing for Older Persons Act of 1995. This legislation recognizes that elderly housing is special housing for seniors, that the elderly are a special population that deserve to live in housing reserved for the elderly, and that this legislation does not constitute discrimination against families.

HUD recently published regulations to clarify what constitutes elderly housing. HUD published these regulations because the Congress in the Housing and Community Development Act of 1992 required HUD to clarify what constitutes elderly housing. I remind my colleagues that HUD has failed for years to provide the proper guidance and leadership on what constitutes elderly housing, despite confusion and costly litigation over this issue. Moreover, the new HUD regulations remain sorely lacking. It is time that we provide clear guidance on what constitutes elderly housing and I urge my colleagues to support H.R. 660.

Mrs. FEINSTEIN. Mr. President, I rise today in support of H.R. 660, the Housing for Older Persons Act of 1995. The main thrust of this legislation is to remove the requirement for significant facilities at 55-and-over communities.

This has been a major issue in California, particularly in the Inland Empire area including Riverside and San Bernardino Counties, which have traditionally been retirement communities catering to all income levels of seniors—from low-income mobile home parks to lavishly planned, full service retirement communities. One only has to drive along Interstate 10, from Los Angeles to Phoenix, to see the many billboards advertising these retirement communities.

Previously, these 55-and-over communities have been known as adults only communities. However, during consideration of the Fair Housing Amendments of 1988, in an attempt to combat discrimination against families with children, adults only communities were called into question.

In turn, Congress decided to preserve adults only communities, which previously housed seniors, with the new designation of ''55-and-over.'' One of the requirements for this designation was that communities must have ''significant facilities'' in order to qualify. The Department of Housing and Urban Development did not develop rules for ''significant facilities,'' however, until 1991. Unfortunately, these rules proved to be very controversial and resulted in several expensive law suits being brought by HUD against the very communities Congress had intended to protect.

The most controversial point had to do with the definition and differing interpretations by the courts and HUD as to what constituted ''significant facilities.'' Did it mean that there had to be a 24-hour, on-site medical facility, for example, or, could shuffleboard or other planned activities suffice?

Last year, due partially to concerns expressed by my office, former Department of Housing and Urban Development Assistant Secretary for Fair Housing and Equal Opportunity Roberta Achtenberg conducted hearings around the country, including one in San Bernardino County. From what I understand, communities were pleased with the outcomes of the hearings, and eventually, HUD developed new rules which lessened the definition of ''significant facilities.''

Still, cities have been anxious for Congress to adopt H.R. 660, to permanently eliminate the ''significant facilities'' requirement. Take for example, in my state of California, the city of Hemet.

In the city of Hemet, 50 percent of its housing is 55-and-over communities. Removing the seniors-only status and requiring these communities to absorb families with children will result in a dramatic shortage of classroom space, and the tax-base. Demographics are such that the financing of new school construction, in a city that was planned as a retirement community, would not be possible.

Adoption of H.R. 660 will preserve existing 55-and-over communities, and will clarify, once and for all, congressional intent with respect to protecting senior housing in retirement communities.

Although discrimination against families with children should not be tolerated, when a community has been planned specifically as a retirement community, and at least 80 percent of its residences house senior citizens, as this bill requires, then I believe those communities should have a right to be preserved as senior housing.

Mr. FAIRCLOTH. Mr. President, I strongly support H.R. 660. This legislation will eliminate many of the problems that senior communities have faced over the last several years, particularly from HUD's excessive rules interpreting the Fair Housing Act.

Mr. President, unfortunately, this is not the only problem that arises from interpretations of the Fair Housing Act. In August of this year, I introduced legislation, S. 1132, to address two significant problems.

First, S. 1132, would prevent HUD from investigating and even suing people who protest the establishment of group homes in their communities.

S. 1132 would also overturn a recent Supreme Court ruling in City of Edmonds versus Oxford House, by allowing localities to zone limits on the number of unrelated persons living together if the zoning scheme is designed to preserve a single family neighborhood.

In that case, a home for 10 to 12 recovering drug addicts and alcoholics was located in a single family neighborhood. The city tried to have the house removed because it violated the city's local zoning code that placed limits on the number of unrelated persons living together. The Supreme Court ruled that the Fair Housing Act was violated by this zoning law.

I think the Supreme Court ruled incorrectly in this case. The Congress clearly intended an exemption from the Fair Housing Act regarding the number of unrelated occupants living together. My bill would clarify that localities can continue to zone certain areas as single family neighborhoods, by limiting the number of unrelated occupants living together. I think families should be able to live in neighborhoods without the threat that certain types of group homes—which may be unsuitable for single family neighborhoods—can move in next door and receive the protection of the Fair Housing Act.

But the most important point is this one: Decisions about zoning should be made at the local level and not in Washington. If a locality wants to permit group homes in a certain area—it can do so without HUD interfering in the decision using the Fair Housing Act as cover.

Mr. President, my bill would also correct the abuses of the Fair Housing Act by the Clinton administration. In the past 2 years, HUD has taken to investigating people under the Fair Housing Act who have protested group homes coming into their neighborhoods. The most well known of these cases was the incident involving three residents in Berkeley, CA. HUD's actions were a blatant violation of their right to freedom of speech. HUD's abuse was so bad that they dropped the suit and promised they wouldn't do it again. HUD even issued new guidelines on the subject so it couldn't happen again.

But, not long ago, HUD has done it again. HUD is investigating five Californians who went to court to get a restraining order against a group home for the developmentally disabled that was planned for their neighborhood.

Mr. President, the issue is not whether the location for this group home is proper, that issue can be decided by the courts. The issue is freedom of speech. I believe anybody has the right to speak their mind and to take legal action against what they think is an injustice. HUD has taken the opposite view in this debate. I think this is wrong and needs to be clarified in law by amending the Fair Housing Act.

Mr. President, I offer strong support for H.R. 660, but would hope that in the near future, the Senate would consider other changes to the Fair Housing Act, particularly those in S. 1132. I hope that we can make these reforms to the Fair Housing Act because we need to preserve this act to prevent real discrimination, but we do not need to use the act to pursue a far, far left agenda that defies common sense, and silences free speech.

Mr. GORTON. Mr. President, today we passed a significant bill which will remove the burdensome bureaucracy of the Federal Housing and Urban Development Agency off the backs of American seniors. In this bill, which I originally introduced in the Senate during the 103d Congress, we take significant steps to provide fair, safe, and independent housing for Americans over the age of 55. I have received thousands of letters from concerned residents of ''55 and over'' communities in Washington.

Today, law provides for people over the age of 62 to be provided with special housing arrangements. The qualifications for a senior housing development are simple: A community for persons age 62 and older is required to have all residents age 62 or older. In 1988, Congress also legislated that communities with citizens 55 or older would qualify as ''housing for older persons,'' provided those communities met three requirements: 80 percent of the housing units must be occupied by at least one person age 55 or older; a community must show in its advertising, rules, regulations and leases that it intends to serve people over the age of 55; and the community must provide ''significant facilities and services'' to its residents.

It's those words: ''Significant facilities and services'' which have proven to be so problematic. HUD tried to tell us what ''Significant facilities and services'' meant—it received over 15,000 comments, all expressing continued confusing and puzzlement over the Department's attempt at clarification. This is an area of law that is crying for legislative relief. I believe, as do my constituents, that the Department's rules go too far in mandating that all ''55 and over'' communities provide expensive facilities and services and make these services accessible to older persons. Clearly, Mr. President, privately owned and operated ''55 and over'' communities catering to low- and moderate-income seniors cannot be expected to have the same facilities and services as federally funded housing projects.

Seniors of all incomes deserve protection. As noted in the Senate report to H.R. 660, ''poorly drafted regulations have discouraged or outright denied seniors housing.'' With the overwhelming passage of H.R. 660, the U.S. Senate has stopped this practice. The U.S. Senate took a stand on behalf of our seniors, and their right to fair, safe, and equitable housing.

Mr. BROWN. Mr. President, let me repeat what is at issue.

The way the HUD rules operate is that senior citizens are not allowed to have a community by themselves unless they had some facilities that were laid out by HUD, and they were things like access to swimming pools, accessible club house, private fishing pond, a hair salon, a golf course, lawyer's office, a vacation house watch, pet therapy services, tool loan services, regularly offered CPR classes, fashion shows, craft classes in making jewelry, a variety of classes including t'ai chi or swimming therapy.

What they came up with in the HUD rules was a flat rule that said if you are not rich and cannot afford these extraordinary services, we are not going to let you live together.

Mr. President, that is not right. Seniors in this country deserve an opportunity to have reasonable rules. That is what this bill does. It has reasonable regulations, and it is a reasonable guideline that repeals some very unreasonable regulations. It has the overwhelming support of seniors around this country, the overwhelming support of the House. And I strongly urge its adoption.

Mr. President, we are now at a point where the proponents of the bill have used much of their time. I suggest the absence of a quorum and ask that the time that is consumed in the quorum call be equally divided, except that at least 5 minutes remain usable at the end of the debate for the proponents of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, parliamentary inquiry. I wish to speak in

opposition to this bill. Is there time for me to do that? And under whose control is the time?

The PRESIDING OFFICER. The Senator controls 23 minutes in his own right.

Mr. BIDEN. I thank the Chair very much.

Mr. President, this bill, in my view, retreats from the commitment we made to families with children. In 1988, Congress said that America's housing providers should not be able to discriminate against families with children. We did this in the face of widespread evidence that such discrimination against families with children existed.

We spent a lot of time on this floor—and I participated and have for the years I have been here—talking about discrimination against minorities, talking about discrimination against the elderly, talking about all forms of discrimination, as we should, as we should. But in my view, we spent precious little time on this floor talking about what is a mounting form of discrimination, discrimination against children, because some people find them inconvenient, inconvenient to be around.

In 1988, Congress said that America's housing providers should not be able to discriminate against children as well as against blacks or Hispanics or people based on their religion or based on their gender. We took this action because we wanted to prohibit all-adult housing communities just as we had prohibited all-white housing communities in 1968 with the passage of the Fair Housing Act in the first place.

Even as we said no discriminating against families, we also carved out an exception for legitimate retirement communities which catered to the special needs—not just desires, needs—and requirements of the elderly. The distinction we made then, and which I stand by now, is this: You cannot just keep children out because you do not like them, you cannot just keep children out because you do not want tricycles around, you cannot just keep children out and families with children out because it is inconvenient and you do not like it.

If you are going to exclude children, we said, you must be an organized community providing ''significant facilities and services'' designed to meet the physical and social needs of the elderly. Or put another way, a lot of old folks like me—I am 53 now—get together and say, ''We're tired of having kids around and we're going to have this gated community that X percent of us are over the age of 50, and we can prevent someone from moving in who has kids.''

Well, I tell you what, I think that—and by the way, there was ample evidence in the hearings we held then that that is just what was being done. What we were not concerned about is a community for the elderly with special needs where they needed ramps, where they needed special dining facilities, where there was some type of extended care, where it was in fact designed for elderly persons who in fact physically needed this special circumstance or emotionally needed this special circumstance, but not just because all of a sudden we have become trendy and decided that kids are kind of in the way.

If we are going to exclude children, we said, you have to be an organized community providing significant facilities and services. This ''significant facilities and service'' requirement was put into law for, as I have said, a very good reason, put there to distinguish between true senior communities and those that just think children are a pain in the neck. We recognized that something other than an animus against children must set these communities apart in order to meet an exemption from the Fair Housing Act.

I understand that what constitutes significant facilities and services has been a matter of a great deal of controversy and uncertainty over the years, and I have not been satisfied, because I have not believed that we set down stringent enough requirements to exclude—exclude—families with children.

Heck, there are communities who let dogs in, let people have dogs, but will not let people have children. And so, significant facilities and services, as I indicated, have been a matter of much controversy.

Also understand, the Department of Housing and Urban Development has taken many different stabs at the definition which has led to confusion and has made it difficult for those trying to comply with the law.

Mr. President, none of that, in my view, should lead us to abandon the basic principle: If you are going to be able to discriminate against families, you should be special, you should be serving the special needs of seniors. This principle should remain our guidepost more now than ever, especially since the Department of Housing and Urban Development has just recently promulgated completely revised regulations which resolve the confusion and make it much easier and clearer for senior housing communities to take advantage of the exemption.

The Department, many now agree, has finally gotten it right. Under the new regulations, which went into effect September 18 of this year, a housing facility can self-certify. It is amazing, we do not let many other folks self-certify that it falls under the Fair Housing Act exemption by simply filling out a straightforward, easy-to-understand checklist of facilities and services designed for older folks, which, I add, I do think is too lenient, not too strong. My staff does not like me to say that, but that is what I think. I think it should be more stringent, if you are a senior community meeting the exemption.

But the checklist contains a menu of some 114 facilities and services in 11 categories. If a facility provides a mere 10 of them, like wheelchair accessibility, communal recreation facilities, periodic vision or hearing tests or fellowship meetings, it qualifies as a senior housing project and may exclude families with children.

I want to make it clear to seniors who are not happy with me about this, I do not even think that is stringent enough, but at least it attempts to make the distinction.

If a facility's status is challenged, it need only show that the certification was accurate at the time of the alleged violation. The list of facilities and services included in the new rule was drawn from amenities actually provided by a wide cross-section of senior housing developments across the country, large and small, affluent and less well off, manufactured housing communities, condominiums and single-family communities.

In testimony before Senator BROWN's subcommittee, a representative from the Department of Housing and Urban Development testified to the extreme flexibility and cost consciousness built into the new guidelines. Here is what he said, and I quote:

> The rule does not assume that people living in housing for older persons are frail, disabled or require nursing home care. It does not require congregate dining or on-site medical care. The facility and services may be provided on or off the premises of the housing.

Let me add, I think it should require those things. But they may be provided by staff, volunteers, including residents and neighbors, or by third parties, such as civic groups or existing organizations in the community.

The new regulation does not require lavish services, nor do the mandated facilities, affordable only by the well-heeled; rather, they simply embody what is already being offered by bona fide senior communities of all sorts across the map. If a facility is providing at least 10 of the 114 facilities or services on the list, it qualifies for an exemption, a self-designated exemption.

The bill's supporters say the bill will make it easier and surer for a housing community to determine whether it qualifies for a fair housing exemption, and they are absolutely right about that. It makes it a lot easier. They do not have to be a senior facility. They can just not like kids. They can just not like kids around.

What kind of message are we sending to families with children, most of whom are breaking their necks just making it? What are we saying? We want to make it easier for you to have a rationale to keep me out of that community with my 14-year-old daughter?

I think it is outrageous—I acknowledge, I am the only one who seems upset about this; no one else is here to speak against it, that I am aware of—unless they want to make it even easier and just say it is not in vogue to have kids: ''If you have kids, go off and

live by yourself.'' The other folks should go off and live by themselves, and if the kids want to follow, so be it. Think about it for a minute.

Let us say that a complex contains 100 units; that all of these are occupied by two people; and that 80 percent are occupied by at least one person over the age of 55. In this hypothetical community, it will be able to lawfully discriminate against families with children under this bill if as few as 80 residents of the 200 of them are over the age of 55, while 120 could be under the age of 55, and we could put up a sign: ''No children allowed.''

They probably all call themselves great Americans, too, by the way. They all talk about how they care about families, and they may even go visit their grandchildren and pat them on the head on their birthdays and Christmas. What does that say, if you can build a community where 80 out of 200 people living in the community are over 55 and you can say ''no kids''? If we want population control, this may be one of the indirect ways of going at it.

To my mind, the math just does not add up to fairness for families and children. I believe this bill will open the door to the very kind of discrimination we sought to outlaw in 1988, and I think it will make it just too easy for folks to hang a sign on the door that just says, ''No children allowed.''

I cannot support this bill. I urge my colleagues not to support this bill. I realize that I am going to hear an awful lot from senior citizens about their rights. I do not think there is anybody on this floor who votes to protect the rights of seniors any more than I do, but no senior, unless they have a physical or emotional problem and need, has a right to tell a kid they cannot live next door. It is just too darn bad, and we are allowing it here.

I might add—well, I will not add anything else, because I will just get myself in trouble if I keep thinking about it and keep talking about it. I do not think this is the right thing to do.

I am sure to most, because we are so busy, this is just a clarification of an existing piece of legislation. That is how it is advertised. I respect my colleague from Colorado. He is joined in support for this by many of the strongest allies in the area of civil rights, many of the colleagues on this floor, my colleagues who I tried rally a little bit about this. They seem to think I am kind of off. One of them even said, ''BIDEN, that's because you come from a big Catholic family, you keep talking about the size of families.''

I do not like people who discriminate against kids. Period. I think it is well-intended what is being done here, but I want to tell you, if you are 55 years old, ambulatory, still working, have no problem, live at home, have a wife or have a husband, you are hanging around the house, and you are fine and you do not have any special needs, you should not be able to say a kid cannot move next door to you. Period. Period.

I just think this is wrong. I think it is dead wrong. But I am going to lose. I just want to make sure when my children and grandchildren read this, they will know their old man and their grandfather meant what he said.

The only important thing—the only important thing—in this whole outfit is kids. That is the only important thing. All the rest is insignificant. And when we allow people to say, ''No kids here,'' it is like we say, ''No dogs here,'' it is like we say, ''No blacks here.'' That is just wrong, unless there is a real good and compelling reason for it. The fact you are over 55 and 80 out of 200 people in a community over 55, that ''ain't'' good enough for me.

I yield the floor.

The PRESIDING OFFICER (Mr. ABRAHAM). Who yields time?

Mr. BROWN. Mr. President, I yield myself 2 minutes. I want to pay tribute to my very thoughtful colleague from Delaware. His comments are heartfelt, and I know he is very sincere. I know his concerns come from a genuine interest in seeing that the irrationality of discrimination does not pervade our society, and that we evaluate and work with each other on the basis of reasonableness, thoughtfulness and caring. I want to pay tribute to him because I have a great deal of respect for him and what brings him to his position.

I am persuaded that this is a good bill for a couple of reasons. One, I believe seniors, who have reached that stage in life where they need to be in a safe, supportive environment, should be allowed that opportunity. That is what the bill does.

Second, Mr. President, I am persuaded that the guidelines that HUD came up with are simply an attempt to make it impossible to make this exemption for seniors housing work, not reasonable attempts at regulation. After two administrations, three attempts at regulations, four Congresses, specific Federal legislation directing HUD to fix this, countless lawsuits, numerous hearings and policy decisions, a record number of constituent letters to agencies, the fact is that we ought to act and make it possible for seniors to have units by themselves, if they wish it.

Mr. President, let me make two observations. One, nobody who wants to be around kids, by this measure, is precluded from being around kids. It does not do that. It also ought to be noted, Mr. President, that when you have senior housing and seniors sell their home and move into the senior housing, it makes available additional units to families who have children. We ought to ask ourselves: where did the senior who moves into a seniors community come from? Certainly they are vacating other housing. So the process of senior housing is one that adds units for family units, not subtracts from it.

Last, Mr. President, I think any objective observer would look at the guidelines that have come out from HUD and understand they have simply not served the American people. To suggest that to have senior housing units, you have to have to have access to swimming pools or hair salons, or access to a clubhouse, or life guards, or exercise instructors, or crafts instructors, or golf courses, or a lawyer's office, or polka and ballroom dancing instructors, or fashion shows, is simply to recognize what they have done with these regulations. They have said that you have to be rich to qualify for senior housing.

Mr. President, the reality is this: The majority of Americans who retire do not have a lot of extra money and a lot of them cannot afford these things. What we have done is come up with HUD regulations that are reserved for the very rich, and that is silly and wrong, and it ought to be corrected. This bill does that. This bill is about expanding freedom, about giving seniors choices. I think it is a wise measure. It is why the House passed it by such an overwhelming margin.

A concern that has been raised about H.R. 660 is whether it requires a seniors community to be intended for 100 percent occupancy by people over the age of 55. Section 807 (b)(2)(C) states that the housing is ''intended and operated for occupancy by persons 55 years of age or older.'' The congressional intent of this provision is simply that the main purpose behind creating the community is to provide housing for older persons. Any suggestion that this requires the community to intend that 100 percent of the units be occupied by those 55 and older is a grave misconception. the true meaning behind this general statement is evident in the bill's language, the legislative history, the subcommittee report, and current Federal regulations.

This legislation will not require all units in a seniors community to be intended for use by persons over the age of 55. The bill language makes it obvious exactly when counting occupancy is critical. The bright-line standard it creates clears up any confusion in determining what constitutes seniors housing: At least 80 percent of the occupied units are occupied by at least 1 person who is 55 years of age or older—not 100 percent and not total units—80 percent of occupied units.

But the general purpose of the community, as outlined by the section in question, is to provide housing for older persons—and the definition of what constitutes housing for older persons is that 80 percent of the occupied units are occupied by persons 55 years of age and older.

The language of the bill is clear on this point, and so is the legislative history. In 1988, Congress extended the Fair Housing Act to prohibit discrimination in housing against families with children. At the same time, however, Congress provided for the exemption of three different types of seniors housing, including the one we are examining today; that is, housing ''intended or operated for occupancy by at least one

person 55 years of age or older per unit.''

The fact that H.R. 660 does not require 100 percent occupancy for housing of persons 55 and older becomes even more evident when one compares this category of seniors housing with another one of the three original exemptions. The second category is ''housing intended for, and solely occupied by, persons 62 years of age or older.'' Note the striking difference, besides age, between these two categories: The one we are concerned with today no where states that housing is to be solely occupied by persons 55 years of age and older. Yet if this was the congressional intent, certainly it would have been delineated in 1988 when the three categories were first introduced.

The subcommittee report also promotes this interpretation. In the section-by-section analysis, the provision in question is interpreted so that ''the housing provider can demonstrate its intent to providing housing for persons 55 years or older, even if it allows persons under age 55 to continue to occupy dwelling units or move into the housing facility and occupy dwelling units, as long as the housing facility maintains the 80 percent occupancy threshold.''

The congressional intent voiced throughout the legislative history and subcommittee report is to make it easier for seniors communities to qualify as housing for older persons, thereby making seniors housing, particularly lower income seniors housing, more affordable. Requiring 100 percent of the units in a community, occupied or not, to be intended only for persons age 55 and older does not accomplish this goal—in fact, it makes qualifying as seniors housing more burdensome and would further restrict the availability of affordable seniors housing.

What Congress does intend is to create a 20-percent buffer zone for seniors communities so that they can more easily qualify, and remain qualified, as housing for older persons. It is easy to predict several situations that could arise making this buffer zone a necessary and vital protection for seniors housing.

Suppose an elderly woman owns a condominium in a seniors housing community. When this woman passes away, she wants to leave the home to her middle-aged son. Inheritance and transfer of property are an everyday occurrence in our democratic society, and the 20-percent buffer zone outlined in H.R. 660 would accommodate such a bequest.

Or consider the widow of a senior citizen who has passed away. If the surviving spouse is younger than 62 or 55, then, without H.R. 660, they face not losing a loved one, but also having to move out of their own home. This is not the role of the Federal Government. H.R. 660 corrects this.

The possible scenarios that affect seniors housing go even further—to potentially threatening the very existence of seniors communities. If a seniors apartment complex has 100 rooms available but can only find enough interested seniors to occupy 90 of them, this bill would permit the remaining 10 rooms to be occupied by families or other people under age 55. Forcing the communities to leave these 10 apartments vacant because seniors were not available could threaten the economic viability of running a seniors community. H.R. 660 protects seniors from that risk.

Current Federal regulations also support the fact that housing ''intended and operated for occupancy by persons age 55 and older'' does not mean 100 percent occupancy is required. Current regulations require similar intent as what is proposed in H.R. 660. In regard to housing for persons 55 and over, it states that the owner or manager of a seniors community must ''publish and adhere to policies and procedures which demonstrate an intent to provide housing for persons 55 years of age or older.'' Not at any time has HUD interpreted this to mean 100 percent occupancy by seniors. This is a general statement requiring that the main purpose behind the housing facility is to provide housing for seniors. No specific or numerical requirements are prescribed, just that the goal of their venture is to make seniors housing available.

A specific, numerical requirement is prescribed in this bill, but you won't find it before the bright-line test in section 807(b)(2)(C)(i). This bright-line standard is the force of H.R. 660, replacing the ambiguous ''significant facilities and services'' requirement that currently exists. But nothing else in this language prescribes any occupancy requirements beyond the bright-line standard of 80 percent actual occupancy.

Nothing in the legislative history, congressional intent, current CFR's, or language of this bill requires seniors communities to have the intent to occupy 100 percent of their housing units with persons 55 years of age and older. There is a well-thought and intentional 20 percent buffer zone to protect seniors communities and ensure they are effective, not unduly burdened, and able to provide the best services to our most valued citizens at the most affordable cost. The bright-line standard and everything surrounding this bill make that clear. Do not be misguided by inaccurate and hasty fears. H.R. 660 does not require the intention of 100 percent occupancy, but rather the clear, understandable condition that to be considered housing for older persons, 80 percent of the occupied units must be occupied by persons age 55 and older.

Mr. President, I believe this completes all the arguments. I ask unanimous consent that all time be yielded back.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to read the third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from North Carolina [Mr. FAIRCLOTH] is necessarily absent.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 94, nays 3, as follows:

[Rollcall Vote No. 590 Leg.]

YEAS—94

| | | |
|---|---|---|
| Abraham | Frist | McCain |
| Akaka | Glenn | McConnell |
| Ashcroft | Gorton | Mikulski |
| Baucus | Graham | Moseley-Braun |
| Bennett | Gramm | Moynihan |
| Bingaman | Grams | Murkowski |
| Bond | Grassley | Murray |
| Boxer | Gregg | Nickles |
| Breaux | Harkin | Nunn |
| Brown | Hatch | Pell |
| Bryan | Hatfield | Pressler |
| Bumpers | Heflin | Pryor |
| Burns | Helms | Reid |
| Byrd | Hollings | Robb |
| Campbell | Hutchison | Rockefeller |
| Coats | Inhofe | Roth |
| Cochran | Inouye | Santorum |
| Cohen | Jeffords | Sarbanes |
| Conrad | Johnston | Shelby |
| Coverdell | Kassebaum | Simon |
| Craig | Kempthorne | Simpson |
| D'Amato | Kennedy | Smith |
| Daschle | Kerrey | Snowe |
| DeWine | Kerry | Specter |
| Dodd | Kohl | Stevens |
| Dole | Kyl | Thomas |
| Domenici | Lautenberg | Thompson |
| Dorgan | Levin | Thurmond |
| Exon | Lieberman | Warner |
| Feingold | Lott | Wellstone |
| Feinstein | Lugar | |
| Ford | Mack | |

NAYS—3

| | | |
|---|---|---|
| Biden | Chafee | Leahy |

NOT VOTING—2

| | |
|---|---|
| Bradley | Faircloth |

So the bill (H.R. 660), as amended, was passed.

Mr. COCHRAN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SMITH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SMITH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PARTIAL-BIRTH ABORTION BAN ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 1833, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1833) to amend title 18, United States Code, to ban partial-birth abortions.

The Senate resumed the consideration of the bill.

Pending:

(1) Smith amendment No. 3080, to provide a life-of-the-mother exception.

(2) Dole amendment No. 3081 (to amendment No. 3080), of a perfecting nature.

(3) Pryor amendment No. 3082, to clarify certain provisions of law with respect to the approval and marketing of certain prescription drugs.

(4) Boxer amendment No. 3083 (to amendment No. 3082), to clarify the application of certain provisions with respect to abortions where necessary to preserve the life or health of the woman.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senator will suspend. The Senate will please come to order.

Mr. SMITH. Mr. President, I ask for the yeas and nays on the Boxer amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 3081 TO AMENDMENT NO. 3080

Mr. SMITH. Mr. President, I now call for the regular order with respect to the Dole amendment.

The PRESIDING OFFICER. The Senator has that right. The pending question is the Dole amendment No. 3081 to the Smith amendment 3080.

Mr. SMITH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, I ask for the yeas and nays on the Dole amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BROWN. Mr. President, I want to make it clear that my hope is to offer two amendments to this bill for consideration by the Senate. One would deal with the problem of a deadbeat father having standing to bring lawsuits, and the other one would deal with the question of who is civilly or criminally liable under the bill. At the appropriate time, with the concurrence of the sponsor of the bill, I will offer those amendments.

Mr. President, at the appropriate time I will try to offer those amendments for the Senate's consideration. I will make copies available in the RECORD.

Mr. President, I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, it is my intention to offer an amendment concerning deadbeat dads. The amendment would make it clear that fathers who are deadbeat and do not marry the mother do not have the right to sue under this bill and thereby gather a financial bonanza. I circulated a draft of that amendment to the parties who are leading the debate on this bill.

I ask unanimous consent that I be allowed to offer that amendment without a second-degree amendment being in order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BROWN. Mr. President, I ask unanimous consent that the pending amendment be set aside so that I may offer the amendment.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object, I would ask that we go into a quorum.

Mr. BROWN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Will the Senator yield for a question before he begins? And I am fully supportive of his amendment, the way he is approaching it.

Mr. BROWN. I am happy to yield.

Mrs. BOXER. I just want to get on the record that it is not the Senator's intention to have his amendment voted on prior to the Boxer amendment and the Dole amendment but, rather, after the Boxer and the Dole amendments are disposed of?

Mr. BROWN. That is an accurate statement of my intention, and my hope would be that absent agreement, we would save my amendment until after the disposition of those two amendments.

The PRESIDING OFFICER. The Senator needs to make a request.

Mr. BROWN. Mr. President, I ask unanimous consent that no vote occur on the Brown amendment, which I am about to offer, until the Boxer and Dole amendments are disposed of.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mrs. BOXER. I thank my friend, and I wish him the best of luck with his amendment, which I will support.

Mr. BROWN. I ask unanimous consent that the pending amendment be temporarily set aside so that I may offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3085

(Purpose: To limit the ability of dead beat dads and those who consent to the procedure to collect relief as provided for in this section)

Mr. BROWN. Mr. President, I rise to offer an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. BROWN] proposes an amendment numbered 3085:

On page 2, line 14, strike ''(c)(1) The father,'' and insert the following: ''(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure,''.

Mr. BROWN. Mr. President, as drafted, the bill now extends the right to sue a physician and others involved in the partial-birth abortion process, to the father and other parties.

It is this Senator's belief that extending the right to sue under the bill to a father, who has assumed the responsibilities of fatherhood, is appropriate, but it is also my belief that to extend the privilege of standing and the potential enrichment it could convey to someone who has not assumed the real responsibilities of fatherhood would be a tragic mistake. To allow someone a financial windfall when they have not married the mother, when they have not lived up to their responsibilities in our society, would send exactly the wrong message. It would have the effect of granting possibly substantial financial remuneration to someone who has not been willing to meet his commitment to society or to meet the commitments of fatherhood. It would reward a deadbeat dad, something I believe is simply wrong. So this amendment makes it clear that someone who has not married the mother does not have the right to be enriched.

Mr. President, I think that sums up the amendment, and I hope the Senate will favorably consider it after it has had an opportunity to consider and dispose of the Dole and Boxer amendments.

I yield the floor.

Mr. SMITH. Mr. President, I just want to say to the Senator from Colorado that we support his amendment. We think it is a good amendment and